

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2010

Lyle W. Cayce
Clerk

No. 09-40664

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff – Appellee

v.

JAVIER LUMBRERAS-TREVINO,

Defendant – Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:09-CR-146-1

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Javier Lumbreras-Trevino pled guilty to illegal reentry following deportation. He appeals his sentence, arguing that the district court's written judgment of sentence conflicts with its oral pronouncement of sentence. The government agrees.

At the sentencing hearing, the district court departed upward from the Guidelines range of two to eight months. The court imposed a two-year term of imprisonment, finding that the Guidelines understated Lumbreras-Trevino's

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

criminal history category and his criminal history. However, on page three of the statement of reasons attached to the written judgment, the district court checked boxes indicating that it had imposed a sentence “below the advisory guidelines range,” pursuant to a “government motion for a sentence outside of the advisory guideline system.”

Because the written judgment is internally inconsistent and conflicts with the oral pronouncement of judgment, the oral pronouncement controls. *See United States v. Martinez*, 250 F.3d 941, 942 (5th Cir. 2001).

The case is remanded for the district court to amend its written judgment to conform to its oral pronouncement of sentence. *See id.*

REMANDED.